IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2920 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVINDBHAI @ BOBDO RAVJIBHAI PATANWADIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2920 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 20-01-2004. By the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about six criminal cases pending against the petitioner. All these cases are registered under Bombay Prohibition Act. The detaining authority has also relied upon statements of some secret witnesses. After being satisfied subjectively, the detaining authority has passed order of detention against the petitioner, which is impugned in this petition.

2) Mr.Prajapati, learned advocate for the petitioner submitted that the petitioner made a representation against the detention order on 19-2-2004, which was received by the detaining authority on 20th February, 2004. It is also submitted that the detaining authority forwarded the same to the State Government on 23rd March, 2004. It is submitted that therefore, the representation of the petitioner has remained unattended and delay in dispatching representation has ultimately resulted into delay in deciding representation and on this ground order of detention is required to be quashed and set aside.

3) To substantiate his say, the learned advocate for the petitioner has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court as set aside the detention order. In paragraph 6 of the decision, this Court has observed as under :-

" ... ...

6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how ti was dealt with on 17.11.1999 and, therefore, taking a liberal view

that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.

... ..."

4) So far as point regarding delay in deciding representation is concerned, no reply is filed controverting the same. However, after perusing the file Ms.Raval, learned AGP, submitted that the representation of the petitioner was received by the detaining authority on 20th February, 2004 and the same was sent to the State Government on 23rd March, 2004. Therefore, it is clear that for about one month, representation of the petitioner has remain unattended. Usually, in detention cases representation made by the detenu is required to be dealt with forthwith and if there is any delay, such delay is required to be explained properly. Since reply has not been filed in this case explaining delay in deciding representation, this petition is required to be allowed.

5) At this stage, Mr.Prajapati, learned advocate for the petitioner, submitted that the petitioner will not enter Baroda (Rural) taluka for a period of one month from today so that he may not be tempted to repeat such offence. This voluntary statement is recorded and the police authority is directed to monitor the said aspect whether petitioner is entering Baroda (Rural) taluka or not.

6) For the foregoing reasons, this petition is allowed. The continuous detention of the detenu is held to be illegal and the detenu, Arvindbhai alias Bobdo Ravjibhai Patanwadia is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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